



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 219 OF 2017

BETWEEN:

T. K¹CLAIMANT

AND

MOTA ENGIL ENGENHARIA E CONSTRUCAO S.A.DEFENDANT

CORAM: WYSON CHAMDIMBA NKHATA (AR)

Mr. Phokoso- of Counsel for the Claimant

Mr. Mtonga-of Counsel for the Defendant

Mr. Nyambo-of Counsel for the Defendant

Mr. Amos- Court Clerk and Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

INTRODUCTION

The Claimant commenced the present action claiming exemplary damages for negligence and breach of employer's duty, aggravated damages for negligence and costs of the action. She was at all material time an employee of the defendant. the defendant is a Construction Company carrying out various projects across Malawi. Basically, the claimant sued the defendant claiming that suffered sexual harassment in the course of duty perpetrated by one Joachim Carhavarrio, the defendant's employee. She claimed that she suffered injury to her dignity as a woman, emotional and psychological trauma, fear to work with male colleagues in employment set ups and degradation of her being and confidence. After a full trial, the Court decided in her favor. She was awarded aggravated damages for the injury suffered as a result of the

¹ Name withheld for her own interest

Defendant's negligence and breach of duty as an employer. The matter was then referred to this court for assessment of damages which I must now consider.

THE EVIDENCE

The claimant was the first witness for her case. Through her witness statement that she adopted in court, she testified that she was employed by the Defendant Mota Engil on 13th July 2016 as a Time Keeper for the Road project of Thyolo – Thekerani – Muona – Makhanga Road. Due to the nature of her job, she had to go to all sites for this road construction to record the hours worked by various staff working on the project. She was accompanied by her then immediate boss Mr. Joachim Carhavarrio the Defendant's General Foreman using his motor vehicle. It is her testimony that in September, 2016, Mr. Joachim Carhavarrio proposed to be in a relationship with her and she refused. Thereafter, he started using his authority to sexually abuse her and harass her. She complained to the Defendant through several of his officers in the chain of command about Mr. Carhavarrio's abuse but nothing happened and they continued to let Mr. Carhavarrio drive her to the construction sites.

She further testifies that on 23rd November, 2016, he asked her to go with him on a routine inspection of projects and he drove towards Luchenza. Just after Thyolo Secondary School, he forcibly pulled up her skirt forcibly exposed her thigh and started sexually caressing her. She reported the sexual harassment and the endangerment of her safety and being to the Defendant through their Supervisor Mr. Chise but the Defendant continued assigning of Mr. Carhavarrio to work with her. Barely a week later, on 28th Novembers, 2016, Mr. Carhavarrio ordered her to go with him to Bolopoti, which was a construction site. Along the way, Mr. Carhavarrio undressed himself to his knees and ordered her to caress his penis which she refused. He then locked the car and parked it and started attempting to forcibly undress and kiss her. He took out a six gear knife and tried to rip the jean trousers that she was putting on. She fought back until he stopped for fear of attracting attention to themselves. She reported the incident to the Site Supervisor, a Mr. Mkwanda. She was told that she was wasting time trying to report to the Defendant the sexual abuse and harassment perpetrated by the Defendant's employees Jose Silva and Mr. Carhavarrio as the Defendant did not act on them. Apprehensive of her safety, she reported the sexual abuse and harassment to Mr. David Chise who was a Senior Supervisor In-Charge of the whole road construction hoping that being at the top of the Chain of Command he would help. Unfortunately, he too did not take any action.

It is her lamentation that consequent to the Carhavarrio's conduct she suffered injury to her dignity as a woman, mental, emotional and psychological trauma. She has developed a damaged psyche and fear to work with male colleagues. Her humanity, my being and confidence as a woman was grossly damaged and degraded, she was emotionally injured, she lost weight, she suffered headaches, she was depressed

and her blood pressure was constantly high. Her appetite for food was reduced. She adds that the harassment she went through made her feel like a person of no value. She would cry from time to time. She got suicidal and felt worthless all the time. she further lamented that there is no magnitude to qualify the pain, the emotional, mental and psychological scar that remains indelible in her psyche which she carries everyday as result of the sexual abuse, harassment, molestation and objectification she went through for months at the hands of the Defendant's employee which the Defendant neglected to stop.

In cross-examination, she stated that she gave two dates on which she was sexually harassed. She confirmed that the dates were 3rd November, 2016 and 28th November, 2016. She also stated that she complained to Mr. Chisi on 1st December, 2016. She stated that Mr. Chisi was the most senior officer at Thyolo camp but not the overall in charge of Mota Engil. She stated that she was not aware that he was also supposed to report to his bosses. She stated that she was not aware that Mr. Carhavarrio left because his contract had expired. Upon being a shown a document marked "DC3", she stated that it indicated that Mr. Carhavarrio resigned on 21st November, 2016.

The second witness for the claimant's case was Dr. Kazione Kulisewa. Through his sworn statement that he adopted in court, he stated that he holds the post of Consultant Psychiatrist and Head of Department of Psychiatry at the College of Medicine, University of Malawi. He qualified as a psychiatrist in 2017 and was registered as a specialist psychiatrist with the Medical Council of Malawi in February 2018. He has 12 years of clinical experience in mental health and psychiatry. As part of his psychiatry training, he had three months medico-legal training in the Forensic Psychiatry unit at the University of Cape Town. He regularly conducts medico-legal assessments in any usual clinical practice.

It was his testimony that he assessed the Claimant following the Judgement of the Court and the specific order of the Court to establish whether the impact, suffering and aftermath of the sexual harassment was aggravated by Mota Engil's inaction and inability to curb the sexual harassment and to what extent was the aggravation and subsequently prepare a medico-legal report detailing the same. He stated that he established that the claimant alleged that during her employment she was subjected to sexual harassment and abuse at the hands of a fellow employee, Mr. Carvalho. He observed that the claimant experienced a hostile work environment following the disclosure of the sexual harassment complaints. He points out that there is evidence that the claimant's mental health, self-esteem and intimate relationships were impacted by the failure of her employers to act on her reports of sexual harassment. He also points out that there is evidence that she was subjected to verbal harassment and derogatory speech from male colleagues after her complaints of sexual harassment were disclosed. He states that the verbal harassment was centred on the belief that her allegations were false and that she was in a consensual relationship with Mr. Carvalho for money and that she had loose morals. The verbal harassment was intermittent,

experienced for several unspecified months, on both the lengthy bus trips to work and home and at the workplace.

He explains that the verbal harassment was of sufficient severity to cause her to engage in avoidance, through finding alternative means of transport, avoiding work and in one instance getting off the work bus prematurely. He states that the verbal harassment is reported to have caused her emotional distress and physical symptoms such as headaches, sleeplessness and appetite loss. She reported developing a sense of helplessness after lodging her complaints but Mota Engil not acting. She developed a sense of low self-worth after reporting the sexual harassment but no action being taken by her employer. This sense of low self-worth was exacerbated by the verbal harassment she received from colleagues. The low self-worth was further reinforced when her boyfriend Mr. David Dimba accused her of being in a consensual relationship and terminated their relationship. While the sense of low-worth improved after she took legal action, she intermittently still experiences low self-worth. After the termination of her relationship with Mr. Dimba, She has a prolonged period of passed suicide thoughts which sufficiently resolved. She continues to experience intermittent anger and resentment directed to Mota Engil. These feelings are due to the perceived damage to her reputation. It is probable that the above-mentioned symptoms were precipitated or aggravated by the inaction of the defendant's employers.

In cross-examination, he stated that he gets instructions on questions to answer and if they are not clear he refers them back. He further stated that he invites the patient for an interview. He explained that the interview covers what the client has been experiencing. He agreed that the interview is done through explanations whereby the client provides spontaneous symptoms being experienced and he has to test against other symptoms. He admitted that the interview was basically question and answer. He stated that some of the material he used was Judge Tembo's judgment. He stated that most of the things came from what he was told by the client. He further stated that he normally tests presence of symptoms and then checks consistency. He added that he interviewed the client for 4 hours for two days. He conceded that it was possible for one to lie. He stated that the client may have lied to him about what she had experienced because he was not there. He however added that there was veracity in her account of what happened because there was consistency in what she narrated. He stated that the client told him that Mr. Carhavario resigned from Mota Engil. He admitted that Mr. Carhavario did not resign.

Such was the evidence on assessment of damages. I would like to thank both Counsel for the guidance as evidenced by the well-researched submissions filed in support of the assessment of damages herein in which several authorities have been cited. This court has given the submissions and the authorities counsels cited the most anxious consideration.

THE LAW AND APPLICABLE LEGAL PRINCIPLES

On the law and principles governing assessment of damages, it is trite that the purpose of awarding damages is to compensate the injured party as nearly as possible as money can do. That is to say, to place the claimant in a position he would be had he not suffered the damage or loss. This is what is termed the principle of *restitutio intergrum*. It is not possible to quantify damages with exactitude. However, courts use comparable cases as a guide in coming up with a reasonable quantum of damages. See the case of **Kalinda –vs- Attorney General (1992) 15 MLR 170 at p 172**. The Court will also consider factors like passage of time when the award was made, as well as the value of the kwacha at the time of making the award.

DUTY OF THE EMPLOYER/EMPLOYER'S LIABILITY

It is trite that there is a statutory duty and indeed a common law obligation upon the employer to maintain a safe work environment. Section 13 of Occupational Safety Health and Welfare Act provides that it shall be the duty of every employer to ensure the safety, health and welfare of all his employees. This employer's duty is further expounded by the common law under employer's duty to provide safe systems of work, safe place of work and safe practices of work. It was stated in the case of **Tremain v Pike** [1969] 3 All ER 1304 that:

“The employer's duty to his servants is to take reasonable care for their safety and this safety extends to the safety of the premises and the plant and to the conduct of the work but is not restricted to those matters. Put in slightly different words his duty is to take reasonable steps to avoid exposing his servants to reasonably foreseeable risk or injury”.

It is, therefore, mandatory for the employer to maintain and implement a policy to ensure its workforce remains free from threats of workplace violence and harassment, including sexual harassment. An employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee. When no tangible employment action is taken, a defending employer is liable to pay damages just like in any other tort of negligence.

SEXUAL HARASSMENT

In the case of *Mbatha v Zizhou and Another* (HH 675 of 2021) [2021] ZWHHC 675 it is stated that the general principles in respect of pain and suffering, loss of amenities and disfigurement should also apply to the assessment of damages for sexual harassment. Quoting with approval from the authors of Visser & Potgieter *Law of Damages*, 3rd ed., Juta, p 497 it is stated in that case that for sexual harassment in particular, the broad principles to be taken into account in the assessment of compensation should include:

- the nature, extent, duration and seriousness or intensity of the injury to feelings;
- the subjective circumstances and the gender of the victim and of the perpetrator;
- the power dynamics or power relations and socio-economic imbalances between the victim and the perpetrator;
- the age difference between the victim and the perpetrator;
- the pattern of behaviour or conduct of the perpetrator before or after the wrongful act;
- the prevalence of such misconduct and the general conditions of employment;
- the degree of the deprivation of the amenities of life as a result of the injury suffered.

AGGRAVATED DAMAGES

In some cases, the injury done to a claimant may be exacerbated – made worse – by the circumstances and manner of the defendant’s wrongdoing. Where a defendant’s conduct is found to be blameworthy in a particular way, the court may take into account the effects of such conduct in exacerbating the claimant’s injury, and so award higher compensatory damages – what the law calls, aggravated compensatory damages. It is clear from the authorities that aggravated damages will be available where the actionable conduct is particularly “highhanded, malicious, insulting or oppressive” see the dicta of Lord Reid at 1085 in **Broome v Cassell** (No1) [1972] AC 1072. They are intended to compensate a Claimant “for injury to his proper feelings of dignity and pride and for aggravation generally” see **Daley v Ramdath** (1993) H.L.R 273. Aggravated damages are not awarded to punish a defendant. They are compensatory, part of what is fair and reasonable compensation for the claimant’s injury.

COMPARABLE CASES

In considering the amount to be awarded for general damages it is acceptable to have regard to awards issued in comparative cases, although it is immediately recognized that it is hardly possible to find a case or cases that are on all fours with a particular set of facts. Ultimately, in determining general damages a broad discretion is exercised by the court based on what it considers fair and adequate compensation. The nature, severity and permanency of the injuries sustained, together with pain and suffering, disfigurement, permanent disability and the effect thereof on the person’s lifestyle are aspects to be considered. Counsel representing the claimant cites the following cases:

- **The State v the Inspector General of Police and 2 Others Ex parte MM and 18 others** Judicial Review Cause No. 7 of 2020 wherein the Claimants were sexually abused molested, raped and harassed by police officers, the High court in Lilongwe awarded them sum of K135,000,000.00 as compensation. The award was made on 9th March, 2021.

- **PS and 3 others v Malawi Broadcasting Corporation** in which Counsel submits that the claimants were sexually harassed, abused and molested by the Defendant's employee, a director General, who was their boss. Although the matter did not go to trial in keeping with comparable settlements and the gravity of the damage, injury and degradation suffered by the Claimants, the parties settled at the sum of K48,0000,000 in July 2021.

In view of the foregoing, Counsel representing the Claimant prays for an award of MK175,000,000.00 as aggravated damages.

On the other hand, the Defendants submit the following cases below as comparable cases for the injuries sustained by the Claimant:

Malawian cases on awards following sexual harassment and/or sexual assault.

- **State v The Inspector General of Police and others Ex parte M&M and others Judicial Review cause number 7 of 2020**, the Court made the following awards to a number of girls and women who were sexually abused by Police Officers. The Court held that the awards took into consideration the fact that the perpetrators of the crime were police officers who had the constitutional and statutory duty to respect and uphold the Applicants' right to dignity.
 - i. **The 1st Applicant** was forced to undress and was raped in the presence of her 5 years old child who recounts the ordeal and tells it to his friends. She felt pain as her CS wound had not yet healed. Her husband left her together with the two children. she is a single parent suffering shame and reproach in the community. She was awarded the sum of MK6,500,000.00.
 - ii. **The 18th Applicant** was a minor, aged 17 years old and she was living with a mental disability. She was raped mercilessly and left in a shameful condition as she could not run away or call anyone for help. As a result of the rape, she developed wounds in her private parts and the said wounds recur every two months to three months. Her mental condition had deteriorated as she started defecating on herself, a thing she never used to do before the incident. She was awarded the sum of MK10,000,000.00 The court held that the award had taken into account the fact that in the Applicant's condition, there would be need for continued medical attention to mitigate her suffering.

- iii. **The 12th Applicant** was sexually abused by a police officer who ran after her and followed her to her bedroom, pulled her from under the bed where she was hiding. The police officer forcefully inserted his fingers in her private parts and left. He did not rape her. Her husband came to know about the incident, and he deserted her. She was awarded the sum of MK4,500,000.00.
- iv. **The 7th Applicant** was a minor aged 16. She was in form 2 at Mpingu CDSS, a self-boarding school, during the time of sexual assault. She was stripped naked and was physically assaulted with a wooden rod. She was assaulted through having fingers placed in her private parts by a police officer who ended up having forced sexual intercourse with her without any protection. She was exposed to the danger of acquiring sexually transmitted diseases as she started feeling lower abdomen pains, signs of discoloured urine and smelly discharge after the sexual assault. As a student at school, she faced a lot of bullying and mocking by her peers and some members of the community, and this had greatly affected her education. The court awarded her the sum of MK8,500,000.00.
- v. **The 17th Applicant** was a minor aged 17 years old. She suffered sexual assault at the hands of the police when she had her private parts touched by four police officers. She was subsequently raped by one police officer. She dropped out of school after the sexual attack because, being a form III student at Mpingu CDSS, she could not stand the stigma and shame from her peers at school. This affected her performance as most of the times she was failing to focus on her studies. She said she still lives in fear. She was awarded the sum of MK8,500,000.00.
- vi. **The 11th Applicant** was a minor aged 17 years old. She suffered sexual and physical assault at the hands of the police when she and her friends were severely beaten up. She was forced to undress in front of the police officers. One of the police officers went over her and inserted his dirty fingers in her private parts. When he noticed that she was menstruating he beat her again. She said the whole experience was frightening, degrading, and humiliating. She was not raped because of her condition at the time. She suffered embarrassment and even now she experiences public ridicule, and her life is no longer the same as she has low self-esteem. She was awarded the sum of MK7,500,000.00.
- vii. **The 16th Applicant** was a minor aged 17 years old. She suffered sexual and physical assault at the hands of the police. She said she was severely beaten up by the police. She was forced to undress in the presence of the police, and she was

humiliated and deeply traumatized as result of this incident to the extent that she did not want to go back to the same school. Her private parts were forcefully groped by the police officers who did not rape her when they noticed that she was menstruating. She told the court that she has nightmares stress and anxiety due to the horrific experience she had. She was awarded the sum of MK7,500,000.00.

viii. **The 3rd Applicant** was raped right at her house in the presence of her mother-in-law. She suffered a lot of stress and anxiety as she was pregnant at the time. When her husband learnt about the rape, he left her, and she had to nurse the pregnancy alone for 7months. She was humiliated because people did not know her condition before the sexual attack, and they called her names that she was carrying the police officer's pregnancy. she still suffers shame and humiliation as people still refer to her baby twins as children of the police officer. She was awarded the sum of MK6,500,000.00.

ix. **The 13th Applicant** was sexually abused as the police officers touched her breasts and fondled her private parts without her consent. She was awarded the sum of MK4,500,000.00.

Kenyan cases on awards following sexual harassment and/or sexual assault.

- **CSL v CASN Civil Appeal No 319 of 2017**, the Court of Appeal affirmed an award of Ksh.1,000,000.00 (currently equivalent to about MK7,500,000.00) to the respondent who was constantly sexually harassed by various staff members of the appellant who would touch her buttocks, look at her indecently and talk to her inappropriately. The award was made on 7th September 2016 and confirmed by the Court of Appeal on 24th January 2020.
- **Lydia Mongina Mokaya v St. Leonard's Maternity Nursing Home Limited Cause No. 53 of 2017**, the Claimant's case was that she was employed by the Respondent as a clinical officer and, among other things, suffered verbal sexual harassment at the hands of the Respondent's manager. She stated that the manager would come in to deliver drugs at night and directly asked her for sexual favors, which conduct riled her visiting husband. The Court awarded the Claimant the sum of KES600,000 (approximately equivalent to MK4,500,000 using National Bank of Malawi's middle rate of exchange of MK7.5).
- **JWN v Securex Agencies (K) Limited Cause No. 1979 of 2015**, the Claimant claimed that she was sexually harassed when her supervisor publicly made false allegations that the Claimant was caught having sex on CCTV footage (the allegations were made in front of 39 employees): The court held that the said allegations amounted to sexual harassment. In consideration of the claimant's humiliation, hurt feelings, loss of self-respect, loss of dignity, loss of self-esteem and

confidence, and her subsequent vulnerability at work and family levels, the court awarded the claimant the sum of KES1,000,000.00 (approximately equivalent to MK 7,500,000 using National Bank of Malawi's middle rate of exchange of MK 7.5)

Zambian cases on awards following sexual harassment and/or sexual assault

- **Katakwe and Mwamba v Hasekwe, Woodlands 'A' Basic School, Ministry of Education and Attorney General High Court of Zambia 2006/HP/0327** In this case, the Claimant, a thirteen-year-old schoolgirl, was raped by her teacher. The Claimant brought an action claiming damages for negligence and damages for personal injury and emotional distress suffered as a result of the rape. In its decision, the Court held that society's indignation of this type of behavior ought to be reflected in the amount of damages awarded. The Court entered a judgment in favor of the claimant for the total sum of 45 million Zambian kwacha (*given the economic situation in Zambia at the time, this was approximately equivalent to US\$ 9,375, which in turn is approximately equivalent to MK7,593,750 using National Bank of Malawi's current middle rate of exchange of MK810*) for her pain and suffering, medical expenses, aggravated damages, and mental torture.

South African cases on awards following sexual harassment and/or sexual assault.

- **Liberty Group Limited v M (JA105/2015) [2017] ZALAC 19; (2017) 38 ILJ 1318 (LAC) (7 March 2017)**, the Claimant had been sexually harassed on four occasions by her manager. The said sexual harassment consisted of, amongst others, inappropriate sexual comments, touching, groping, and massaging. The court awarded the Claimant the sum of ZAR250,000 (About MK15,000,000 using the current National Bank of Malawi middle rate of MK60).

In view of the foregoing, Counsel representing the defendant prays for an award of K2,500,000.00 as general damages and the sum of K150,000.00 as aggravated damages.

DETERMINATION

In the present case, the judgment on liability and the evidence tendered for assessment proceedings indicates that the Claimant underwent the most graphic and degrading sexual harassment, molestation and abuse. I do not wish to burden this ruling further with a recital of the facts therein but I venture to observe that the defendant's agent, by his gross actions, infringed upon the claimant's rights in many ways. The Bill of Rights under Chapter IV of the Constitution of the Republic of Malawi affirms the right of all people to human dignity and to security of their persons including the right to bodily and psychological integrity (Section 19). In the present case, Mr. Carhavarrio's conduct created an offensive and intimidating work environment that undermined the claimant's dignity, privacy and integrity. Apart from the totality of the conduct being reprehensive in nature, the sexual harassment was persistent despite numerous

attempts to bring the misconduct to the attention of the defendant. It carried with it an open defiance to the claimant's dignity, the employer's duty to ensure safety of other employees and not to mention the laws of the nation.

The court notes with concern from the uncontroverted evidence how the defendant's agent's conduct affected the claimant. She told the court that she suffered injury to her dignity as a woman, mental, emotional and psychological trauma. To date, she has a damaged psyche and have a fear to work with male colleagues. Her humanity, her being and confidence as a woman was grossly damaged and degraded, she was emotionally injured, she lost weight, she suffered headaches, she was depressed and her blood pressure was constantly high. Her appetite for food was reduced. The harassment she went through made her feel like a person of no value. She would cry from time to time and she got suicidal as felt worthless all the time. I must point out at this stage that the judgment on liability expressly ordered that psychiatric evidence be adduced on this regard to guide this Court on the question of quantum of damages. The claimant paraded Dr. Kaziwone Kulisewa, a psychiatrist, who concluded that the claimant underwent major depression and major suffering as a result of the sexual harassment, abuse, molestation and degradation. There is no doubt that this was conduct the court ought to visit upon with substantial aggravated damages.

Another factor that escalates the defendant's culpability, something I found very unsettling, was the defendant's deliberate inaction on complainants of sexual harassment. The evidence indicates that the claimant's complaints were perpetually dismissed as wastage of time as nothing would happen to the perpetrator. In my view, considering the power balance between the claimant and her aggressor, it was clear that she needed assistance through an intervention by the defendant. Somehow, they continued to send the claimant together with her aggressor in the same vehicle for inspections. Apparently, other employers construed the whole thing as a consensual relationship which in the long run led to the breakdown of the claimant's relationship with her boyfriend. All in all, the defendant failed in its legal duty to protect the claimant from further traumatic experiences occasioned by interactions with her aggressor. They condoned the action which gave their agent the mentality that he could have his way and his employer could do nothing about it. Reaching this far, I could not help but pull out my copy of the Penal Code just to satisfy myself on why a couple of the defendant's senior employees who chose to bury their heads in the sand could not be visited upon with the wrath of penal sanctions. All the same, the purpose of this ruling is to determine the quantum of damages herein. Suffice to say that the defendant's conduct was deplorable and the claimant was adversely affected in many ways. Undoubtedly, a substantial measure of aggravated damages is warranted.

In making assessment, it is trite that an award for a similar injury should be comparable and should, to some extent, be influenced by amounts awarded in previous cases, either in the same or neighbouring jurisdictions. Counsel representing the claimant has cited two cases for comparative purposes: **The State v the Inspector General of Police and 2 Others** and the case of **PS and 3 others v Malawi Broadcasting Corporation**. I should mention that this court found the case of **PS and 3 Others** a bit tricky to rely on in the matter herein. Apparently, it was an out of court settlement and there is nothing on the record that this court could refer to in order to appreciate the circumstances that led to the amount that was agreed upon. I am therefore inclined to go by the case of **The State v the Inspector General of Police and 2 Others** (supra) where the court awarded the Claimants who had been sexually abused molested, raped and harassed by police officers a total sum of K135,000,000.00. I noticed that Counsel for the claimant did not mention that the sum of K135,000,000.00 was for 19 claimants with awards ranging from K4,500,000.00 to K10,000,000.00 each depending on the circumstances that each went through.

Counsel for the defendant submits that in the present case, the Claimant was only exposed to verbal harassment and attempts to kiss her and caress her. He further points out that the Claimant herself indicated, and the court confirmed, that she did not suffer any physical injury on paragraph 78 of the Judgment on liability. Counsel is of the view that much as the said form of harassment that the Claimant was exposed to is bad on its own right, it cannot be compared to the harassment and sexual assault suffered by the women and girls in the case of the **State v The Inspector General of Police** (supra).

I am of the view that each case must be decided on its merits. The fact that the claimant did not suffer physical injury does not make it less serious. I believe there is a reason the Judgment on liability directed that a psychiatrist be engaged on assessment of damages. The court wanted the psychiatrist to evaluate the extent of the emotional distress caused by the defendant's employee which was duly confirmed by the psychiatrist. This cannot be taken lightly. Other than that, the court takes note of the injury to the claimant's reputation which has brought along ill will from the colleagues as well as social non acceptance and this is a direct deprivation of the fundamental right of association. In addition to that, the claimant lamented of her broken relationship consequent of the issue herein. All in all, this court will not accept attempts to downplay the effect of the damage the conduct herein caused to the claimant.

Lastly, I thought I should take cognisance of the cases that Counsel for the Defendant cited from outside the jurisdiction. Upon converting the awards to Malawi Kwacha, the awards in the said cases range from K4,500,000.00 to K15,000,000.00. I take it this is not far removed from the awards that were made in the **State v The Inspector General of Police** (supra). The main point of departure in the present case will be that the damages should be at an aggravated scale as per the judgment on liability.

Counsel representing the claimant prays that the court awards the Claimant the sum of K175,000,000.00. as aggravated damages. On the other hand, Counsel representing the defendant is of the view that this is

a perfect case where aggravated damages should be awarded at 6% of the damages. All in all, he prays that the Claimant be awarded the sum of K2,500,000.00 as general damages and the sum of K150,000.00 as aggravated damages. This court is of the opinion that the K175,000,000.00 is on the higher side even upon factoring in aggravated damages and the K2,650,000.00 proposed for the defendant defies the principle of *restitutio in integrum* in accordance with the circumstances of this case.

CONCLUSION

Taking all factors into consideration, this court awards the claimant **K30,000,000.00** as aggravated damages for the defendant's negligence and breach of duty as an employer. The claimant is further awarded costs for the assessment of damages proceedings to be taxed if not agreed by the parties.

DELIVERED IN CHAMBERS THIS 21ST DAY OF MARCH 2022

WYSON CHAMDIMBA NKHATA

ASSISTANT REGISTRAR